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UNITED STATES DISTRICT COURT

FILED
U.S. DISTRICT COURT
NORTHERN DIST. OF TX
FT. WORTH DIVISION

2012 AUG -2 PM 2:05

CLERK OF COURT

4-12CV-541 A
CASE # [REDACTED]

LARRY D WEAST JR
PLAINTIFF,
VS.
RECONTRUST COMPANY NA
DEFENDANT

ORIGINAL COMPLAINT

CERTIFIED MAIL #: 7012 1010 0001 6907 3134

Comes now Larry D Weast, Jr hereinafter referred to as "Plaintiff," and moves the court for relief as herein requested:

PARTIES

Plaintiff in the instant cause is Larry D Weast Jr, hereinafter referred to as "Principal Plaintiff." Principal Plaintiff can be contacted at 1816 Lariat Lane, Burleson, TX 76028, and may be reached by phone at 817-676-7674, or by email at savagenation111469@sbcglobal.net.

Defendant is, Recontrust Company NA, and can be contacted at 2380 Performance Dr TX 75082, Richardson, TX 75082.

JURISDICTION AND VENUE

This court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and § 1332 placing the District Court in the position of Jurisdiction over:

- A. claims of Federal Questions concerning Fair Debt Collection Practices Act, hereinafter referred to as "15 U.S.C. 1692," questions and claims of violation of Constitutionally protected Fundamental Rights;
- B. violations of Plaintiff's common-law Rights in matters involving Federal Corporations and Interstate Commerce in the form of lending and Banking;

Uniform Commercial Code ("UCC" hereafter).

The amount in controversy exceeds \$ 75,000.00.

This court also has supplemental jurisdiction over all other claims that are so related to claims in this action that they form part of the same case or controversy under Article III of the United States Constitution, pursuant to 28 U.S.C. § 1367.

Venue is properly laid in the Federal Court of the United States in the Judicial District ,pursuant to 28 U.S.C. § 1391(c).

Plaintiff avers that the court has in personam jurisdiction over the named Defendant(s)as Defendant(s) are subject to the Jurisdiction of this Federal Court by the following facts:

A. Defendant has entered into interstate commerce by causing to be transmitted through the United States Mail, - Title 18 § 1241;

B. Defendant is subject to the FDCPA - Title 15 § 1692 et. seq. by acting as a Debt Collector, in that Defendant is not the originator of the alleged debt, neither is Defendant a bona fide agent of the originator or subsequent true holder of the alleged debt.

STATEMENT OF FACTS

Plaintiff states as a fact that Defendant, on or about Friday, May 18, 2012 caused to be prepared and sent to Plaintiff, a document noticing Plaintiff that Defendant was the agent for the holder of the note or the true holder of the note.

Defendant made demand on Plaintiff for payment of an alleged debt in the amount of \$115490.92. Defendant, by preparing and sending the above referenced communication claimed authority to collect said debt. Defendant claimed the existence of a document establishing a lien against the property owned by Plaintiff. Defendant claimed authority to exercise the provisions of said lien document for the purposes of collecting the above alleged debt.

Fair Debt Collection Practices Act § 803. Definitions [15 USC 1692a]

As used in this title -- (6) The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.

To Plaintiff's knowledge, Plaintiff never entered into a contractual agreement with Defendant. Defendant claimed authority to exercise foreclosure on an alleged lien against the

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1 property. To Plaintiff's knowledge, Plaintiff never created a document creating a lien against
2 Plaintiff's real property to the benefit of Defendant.

3 Said debt validation letter was sent to Defendant on Friday, April 27, 2012 a request for
4 validation of the alleged under the provisions of the Fair Debt Collection Practices Act
5 (FDCPA).

6 FDCPA Section 809. Validation of debts [15 USC 1692g]

7 (b) If the consumer notifies the debt collector in writing within the thirty-day period
8 described in subsection (a) that the debt, or any portion thereof, is disputed, or that the
9 consumer requests the name and address of the original creditor, the debt collector shall
10 cease collection of the debt, or any disputed portion thereof, until the debt collector
11 obtains verification of the debt or any copy of a judgment, or the name and address of the
12 original creditor, and a copy of such verification or judgment, or name and address of the
13 original creditor, is mailed to the consumer by the debt collector.

14 Defendant has yet to properly respond to Plaintiff's debt validation letter, therefore,
15 Defendant is subject to statutory estoppel from further collections attempts as a matter of law.

16 FACTUAL ACCUSATION

17 "A claim has facial plausibility when the plaintiff pleads factual content that allows the
18 court to draw a reasonable inference that defendant is liable for the misconduct alleged."
19 (Gonzales v. Kay, 577 F.3d 600(5th Cir. 2009)

20 VALIDATION OF DEBT REQUIRED

21 Defendant made a presentment to Plaintiff.

22 § 3-501. PRESENTMENT.

23 (a) "**Presentment**" means a demand made by or on behalf of a person entitled to enforce
24 an instrument (i) to pay the instrument made to the drawee or a party obliged to pay the
25 instrument or, in the case of a note or accepted draft payable at a bank, to the bank, or (ii)
26 to accept a draft made to the drawee.

27 In order for Defendant to make the above demand, Defendant must have some authority
28 by way of a contractual agreement between Plaintiff and Defendant and upon request, must
29 prove up said claim.

30 § 3-501. PRESENTMENT

31 (b)(2) Upon demand of the person to whom presentment is made, the person making
32 presentment must (i) exhibit the instrument, (ii) give reasonable identification and, if
33 presentment is made on behalf of another person, reasonable evidence of authority to do
34 so, and (iii) sign a receipt on the instrument for any payment made or surrender the
35 instrument if full payment is made.

36 Up to the date of the filing of this instant action Defendant is non-responsive to Plaintiff's
37 request for validation of the debt. Defendant's failure to properly validate the debt allegedly
38 owed to Defendant gives Plaintiff reason to believe that Defendant lacks the agency, standing,
39 and/or capacity claimed.

40 In deciding whether the collection letters violate the FDCPA, we examine them from the
41 standpoint of an unsophisticated consumer. See Veach v. Sheeks, 316 F.3d 690, 692
42 (7th Cir.2003); Bartlett v. Heibl, 128 F.3d 497, 500 (7th Cir.1997). "This assumes that
43 the debtor is uninformed, naive, or trusting [.]" Veach, 316 F.3d at 693 (internal

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quotations omitted). However, an unsophisticated consumer possesses "rudimentary
knowledge about the financial world" and is "capable of making basic logical deductions
and inferences." Pettit v. Retrieval Masters Creditors Bureau, Inc., 211 F.3d 1057, 1060
(7th Cir.2000).see Fields v. Wilber Law Firm, Donald L. Wilber and Kenneth Wilber,
USCA-02-C-0072, 7th Circuit Court, Sept 2004

In as much as Defendant's dunning letter failed to provide validation of the alleged debt,
Plaintiff may not, in good faith, respond with payment. In the event an actual debt existed to
which Plaintiff was liable, Plaintiff would be subject to dishonor if Plaintiff made tender to
Defendant without exercising due diligence in determining that Defendant was an agent for the
principal holding the alleged note and the payments were not properly assessed against the note.

§ 3-602. PAYMENT.

(a) Subject to subsection (b), an instrument is paid to the extent payment is made (i) by or
on behalf of a party obliged to pay the instrument, and (ii) to a person entitled to
enforce the instrument. To the extent of the payment, the obligation of the party obliged
to pay the instrument is discharged even though payment is made with knowledge of a
claim to the instrument under Section 3-306 by another person.

(b) The obligation of a party to pay the instrument is not discharged under subsection (a)
if:

(1) a claim to the instrument under Section 3-306 is enforceable against the party
receiving payment and (i) payment is made with knowledge by the payor that payment is
prohibited by injunction or similar process of a court of competent jurisdiction, or (ii) in
the case of an instrument other than a cashier's check, teller's check, or certified check,
the party making payment accepted, from the person having a claim to the instrument,
indemnity against loss resulting from refusal to pay the person entitled to enforce the
instrument; or

(2) the person making payment knows that the instrument is a stolen instrument and pays
a person it knows is in wrongful possession of the instrument.

Plaintiff, on investigation and belief, alleges that Defendant has perpetrated, and
continues to perpetrate an act of negligence against Plaintiff by attempting to collect a debt when
Defendant has failed to provide the statutorily required validation of said debt. Even if a debt did
exist, Plaintiff would not execute payment if Plaintiff tendered payment to a person or entity not
properly authorized to take payment.

§ 3-603. TENDER OF PAYMENT.

(a) If tender of payment of an obligation to pay an instrument is made to a person entitled
to enforce the instrument, the effect of tender is governed by principles of law applicable
to tender of payment under a simple contract.

(b) If tender of payment of an obligation to pay an instrument is made to a person entitled
to enforce the instrument and the tender is refused, there is discharge, to the extent of the
amount of the tender, of the obligation of an indorser or accommodation party having a
right of recourse with respect to the obligation to which the tender relates.

(c) If tender of payment of an amount due on an instrument is made to a person entitled to
enforce the instrument, the obligation of the obligor to pay interest after the due date on
the amount tendered is discharged. If presentment is required with respect to an
instrument and the obligor is able and ready to pay on the due date at every place of
payment stated in the instrument, the obligor is deemed to have made tender of payment
on the due date to the person entitled to enforce the instrument. (Emphasis added)

Plaintiff has properly stated a claim against Defendant as Plaintiff alleged who,
defendant; what, made presentment to Plaintiff without establishing authority to make said

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1 claim; when, on date of dunning letter referenced above; where, within the jurisdiction and venue
2 of this court. Plaintiff herein pleads that defendant intended that Plaintiff act on the defendant's
3 presentment, that Plaintiff believed defendant intended to take action if Plaintiff did not submit
4 to defendant's demands, and Plaintiff was subjected to a civil rights violation as a proximate
5 result of Defendant's failure to abide by standing law.

6 **FDCPA**

7 Determining that "there is abundant evidence of the use of abusive, deceptive, and unfair
8 debt collection practices by many debt collectors," Congress passed the Fair Debt Collection
9 Practices Act (FDCPA) to eliminate those practices. 15 U.S.C. § 1692(a). The FDCPA protects
10 consumers who have been subjected to abusive, deceptive or unfair debt collection practices by a
11 debt collector in an attempt to collect a debt. *See Piper v. Portnoff*, 396 F.3d 227, 232 (3d Cir.
12 2005) (citing 15 U.S.C. §§ 1692e-f).

13 Defendant, in the instant case, is not a party Plaintiff knowingly entered into a contract
14 with. Defendant claims to hold agency or standing as a trustee or assignee of a debt. The
15 allegation of Defendant is that Defendant is collecting a debt concerning a consumer mortgage
16 agreement.

17 An assignee or substitute trustee, it is a debt collector within the meaning of §§ 1692d,
18 1692e or 1692g4 of the FDCPA fails as a matter of law. More specifically, the argument that
19 pursuant to the terms of § 1692a(6), assignees or substitute trustees are only liable under §
20 1692f(6) fails as a matter of law. Section 1692a(6) states, in relevant part, that for the purpose of
21 section 1692f(6) of this title, the term "debt collector" also includes any person who uses any
22 instrumentality of interstate commerce or the mails in any business the principal purpose of
23 which is the enforcement of security interests. Based on this language, any argument that
24 assignees or substitute trustees are exempt from liability under all provisions of the FDCPA
25 *except* § 1692f(6) fail as a matter of law.

26 Plaintiff alleges that a mortgage is a "debt" as defined by 15 U.S.C. § 1692a(5) because it
27 constitutes an obligation to pay money that arose out a transaction in which the property was
28 primarily for personal, family or household purposes. Plaintiff also asserts that, even if
29 Defendant is unquestionably an assignee or substitute trustee, that fact does not preclude it from
30 being held liable as a debt collector. *Piper*, 396 F.3d at 232 (applying the FDCPA to debts
31 secured by real property); *Romea v. Heiberger & Assocs.*, 163 F.3d 111, 116 (2d Cir. 1998)
32 (concluding that an eviction notice for failure to pay rent can be an attempt to collect a debt);
33 *Shapiro & Meinhold v. Zartman*, 823 P.2d 120, 124 (Colo. 1992) (holding that "a foreclosure is a

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1 method of collecting a debt” and, thus, the defendant attorneys “are not exempt merely because
2 their collection activities are primarily limited to foreclosures”) with *Jordan v. Kent Recovery*
3 *Servs., Inc.*, 731 F. Supp. 652, 658 (D. Del. 1990) (distinguishing a debt collector from an
4 enforcer of a security interest, who has a “present right to a piece of secured property and
5 attempts to retrieve something which another person possesses but which the holder of the
6 security interest still owns”).

7 Plaintiff directs the court to consider the Fourth Circuit case of *Wilson v. Draper &*
8 *Goldberg, PLLC*, 443 F.3d 373 (4th Cir. 2006). The plaintiff in *Wilson* brought suit against the
9 law firm that acted as the substitute trustee for the holder of the deed of trust on the plaintiff’s
10 property. The defendant initiated foreclosure proceedings on the plaintiff’s property and sent her
11 a notice that provided information regarding the creditor and the amount of the debt owed. *Id.*
12 The *Wilson* defendants included in their notice a statement specifying that they were not “‘debt
13 collectors’ or acting in connection with the collection of a ‘debt.’” *Id.* Nevertheless, the court
14 held that the default on a Deed of Trust Note is a debt, and that concluding otherwise “would
15 create an enormous loophole in the [FDCPA] immunizing any debt from coverage if that debt
16 happened to be secured by a real property interest and foreclosure proceedings were used to
17 collect that debt.” *Id.* at 376 (citing *Piper*, 396 F.2d at 234; *Romea*, 163 F.3d at 116; *Shapiro*,
18 823 P.2d at 124). The *Wilson* court went on to explain:

19 Section 1692a(6) applies to those whose only role in the debt collection process is the
20 enforcement of a security interest. See *Jordan*, 731 F. Supp. at 657] (“It thus appears that
21 Congress intended an enforcer of a security interest, such as a repossession agency, to fall
22 outside the ambit of the FDCPA except for the provisions of § 1692f(6).”). In other
23 words, this provision is not an exception to the definition of debt collector; it is an
24 inclusion to the term debt collector. It serves to include as debt collectors, for the
25 purposes of § 1692f(6), those who only enforce security interests. It does not exclude
26 those who enforce security interests but who also fall under the general definition of
27 “debt collector.” See *Piper*, 396 F.3d at 236 (“Section 1692a(6) thus recognizes that there
28 are people who engage in the business of repossessing property, whose business does not
29 primarily involve communicating with debtors in an effort to secure payment of debts.”).
30 443 F.3d at 378 (emphasis in original).

31 Even if Defendant herein alleges to be acting as an assignee or substitute trustee to
32 enforce a Deed of Trust Note, nevertheless, in initiating collection proceedings, Defendant
33 undertook the role of debt collector and communicated with the Plaintiff in a manner regulated
34 by the FDCPA. See *Wilson*, 443 F.3d at 376-78. Adopting a position that entities acting as
35 assignees or substitute trustees for mortgage holders are exempt from the provisions of the
36 FDCPA is contrary to the stated purpose of the FDCPA. See 15 U.S.C. § 1692(a) (explaining that
37 the FDCPA is designed to protect consumers from unfair collection practices). Accordingly,
38 Plaintiff has alleged sufficient facts to support the claim that, for the purposes of the actions

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1 described in the complaint, the Defendant is attempting to collect a "debt" and Defendant was
2 acting as a "debt collector."

3 NO ISSUE OF ACTUAL DEBT BEFORE THE COURT

4 Plaintiff has sued Defendant to demand that Defendant comply with long standing law
5 and well established principals of commerce. In as much as Defendant demanded that Plaintiff
6 tender United States money to Defendant in payment of a debt, Plaintiff properly demanded
7 validation of the debt. Where Defendant has claimed agency for a principal, Plaintiff demands
8 that Defendant prove that Defendant's alleged principal has standing as a proper holder of the
9 alleged obligation. Plaintiff further demands proof of Defendant's agency to represent said
10 principal.

11 AGENCY

12 Key to the whole issue here is that agency cannot be presumed, and the party asserting
13 agency carries the burden to prove it. See Schultz v. Rural/Metro Corp., 956 S.W.2d 757, 760
14 (TX App. – Houston [14th Dist.] 1997, no writ); Zuniga v. Navarro & Assocs., P.C., 153 S.W.3d
15 663 (TX App. – Corpus Christi 2005, pet. denied) (citing Bernsen v. Live Oak Ins. Agency, 52
16 S.W.3d 306, 309 (TX App. – Corpus Christi 2001, no pet.)); Alamo Cmty. Coll. Dist. v.
17 Browning Constr. Co., 113 S.W.3d 146 (TX App. – San Antonio 2004, pet. dismiss'd) (citing S.
18 County Mut. Ins. Co. v. First Bank & Trust, 750 S.W.2d 170, 172 (TX 1988)); Disney Enters.,
19 Inc. v. Esprit Fin., Inc., 981 S.W.2d 25, 30 (TX App. – San Antonio 1998, pet dismiss'd w.o.j.);
20 Gray v. Black, 267 S.W. 291 (TX Civ. App. 1924)(agency is not presumed; wife cannot be
21 presumed to be husband's agent). "[O]nly an alleged principal's words or conduct that are
22 represented to the third party can clothe an alleged agent with apparent authority. [BML Stage
23 Lighting, Inc., v. Mayflower Transit, Inc., 14 S.W.3d 395, 401 (TX App. – Houston [14th Dist.]
24 2000, pet. denied)]." Coleman v. Klockner & Co. AG, 180 S.W.3d 577, 588 (TX App. – Houston
25 [14th Dist.] 2005, n.w.h.) (Coleman). In short, the alleged agent's word, alone, never proves
26 agency.

27
28 Therefore, where agency has been challenged, as it is, here, and where it's presumed into
29 existence over that objection, the burden of proof has been shifted. Beard v. Banks, 542 U.S. 406
30 (2004) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986)); Scott v. Harris, __
31 U.S. __, 127 S. Ct. 1769 (2007) (citing United States v. Diebold, 369 U.S. 654, 655 (1962))
32 (summary judgment presumptions are against movant). Mullaney v. Wilbur, 421 U.S. 684 (1975)

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(citing *In re Winship*, 397 U.S. 358 (1970)) (to relieve the plaintiff of burden is to violate Due
Process); *Heiner v. Donnan*, 285 U.S. 312 (1932) (fraud and/or negligence context).

CHALLENGE IS TO BOTH ACTUAL AND APPARENT AUTHORITY.

Where there is no evidence, that a principal authorized someone to act as its agent, agency cannot be proven by declarations of the alleged agent." *T & R Custom, Inc. v. Liberty Mut. Ins. Co.*, 227 Ga. App. 144, 145 (1) (488 S.E.2d 705) (1997). Accord *Oglesby v. Farmers Mut. Exchange*, 128 Ga. App. 387, 389 (6) (196 S.E.2d 674) (1973); *Greble v. Morgan*, 69 Ga. App. 641 (1) (26 S.E.2d 494) (1943). (1) Because there is no evidence in the record of Hilliard's agency, other than the hearsay itself, the evidence was properly excluded. See, e.g., *Process Posters, Inc. v. Winn Dixie Stores*, 263 Ga. App. 246, 250-251 (1) (587 S.E.2d 211) (2003).

It is fundamental that agency cannot be proven by the declaration of the agent. *LAVELLEUR v. NUGENT*, 186 Iowa 234 (Iowa 1919)

Arizona law provides that agency cannot be proven by the acts or declarations of the purported agent. *Cameron v. Lanier*, 56 Ariz. 400, 108 P.2d 579, 580 (Ariz. 1940). Instead, Relator "must prove affirmatively the authority" of Mr. Anderson to accept service on behalf of Dr. Levit, by either showing direct authority or implied authority. *Id.* *United States ex rel. Goulouze v. Levit*, 2006 U.S. Dist. LEXIS 77913 (D. Ariz. 2006)

Looking first to the concept of apparent authority, it is axiomatic that such authority exists only where there is a manifestation by the principal to a third party which causes the third party reasonably to believe that the particular person with whom the third party is dealing has the authority to enter into negotiations or to make representations on behalf of the principal. The *State Life Insurance Co. v. Thiel* (1939), 107 Ind. App. 75, 20 N.E.2d 693; *Kody Engineering Company, Inc. et al. v. Fox and Fox Insurance Agency, Inc.* (1973), 158 Ind. App. 498, 303 N.E.2d 307, 39 Ind. Dec. 537. Such a manifestation by the principal may be found when the principal holds out an agent as a general agent and the third party reasonably believes that the authority exhibited is the type usually held by one in such a position; or, where the principal clothes or allows a special agent to act with the appearance of possessing more authority than is actually conferred. See: *Farm Bureau Mutual Life Insurance Company v. Coffin* (1962), 136 Ind. App. 12, 186 N.E.2d 180. Thus, to prove the existence of apparent authority, it is necessary to establish some conduct on the part of the principal which created the appearance of authority. The representations of the agent will not suffice, for it is the "well established rule that agency cannot be proven by the declarations of the agent, alone." *Pan American World Airways, Inc. v.*

3 It is elementary law that agency cannot be proven by the acts or declarations of the
4 alleged agent. Newman v. Taylor, 69 Miss. 670, 13 So. 831; R. R. Co. v. Cocke, 64 Miss. 713, 2
5 So. 495; Kinnare v. Gregory, 55 Miss. 612; Gilchrist v. Pearson, 70 Miss. 351, 12 So. 333. "An
6 agent's authority cannot be proved by his acts done without the knowledge or authority of his
7 principal." Whiting v. Lake, 91 Pa. 349. Therrell v. Ellis, 83 Miss. 494 (Miss. 1903)

8
9 In view of a new trial, it is proper to say that the letter, "Exhibit E," on page 8 of the
10 abstract, is not competent evidence in the case for any purpose. It tends to show the claimed
11 agency by the declaration of the agent, and we need not cite authority in support of the
12 proposition that agency cannot be established by the admissions or declarations of the person
13 claimed to be an agent. Sax v. Davis, 81 Iowa 692 (Iowa 1891)

14 ***CHALLENGE TO STANDING OF ALLEGED PRINCIPAL***

15 Plaintiff has reason to believe, based on the widely publicized practices of banks in the
16 United States that no instrument exists wherein Plaintiff can be shown to have an obligation to
17 Defendant and/or even if such an instrument were to exist, because of the recent practices of
18 banks in the United States, Plaintiff cannot be sure, absent proof, that Defendant has authority to
19 collect said debt.

20 Current practices concerning consumer mortgages wherein the promise to pay (note) is
21 immediately sold into an investment pool then the pool is divided up among a host of investors
22 then pieces are sold back and forth between parties leaves the true holder of the note in question.
23 With the current, highly publicized practices of registering the note with Mortgage Electronic
24 Registration Service (MERS) for the purpose of hiding the true holder of the note behind MERS
25 as a so-called "nominee" has been discredited by the courts. (See Landmark v Kessler and
26 others) The courts have held the practice of using a straw man holder of the note to hide the
27 multiple sales of the note on the secondary consumer mortgage market as a scam to avoid the
28 requirement that the sale of a security instrument based on a consumer mortgage transaction be a
29 public transaction.

30 Plaintiffs challenge Defendant's authority, both as to actual authority and as to apparent
31 authority. Actual authority arises where the principal authorizes the agent. See Cameron County
32 Sav. Ass'n v. Stewart Title Guaranty Co., 819 S.W.2d 600, 603 (TX App. – Corpus Christi 1991,
33 writ denied). Plaintiff demands that Defendant establish the entire chain of agency, from

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1 inception of the note up to the current alleged holder. Without said proof, no one has signature
2 authority. Apparent authority doesn't exist, either.

3 Defendant now has the burden to prove agency. See Schulz, etc., supra. Again, where
4 that burden is presumed and not compelled proved, the burden, by this request, has been shifted.
5 Cf. Coleman.

6 Plaintiff, on investigation and belief, alleges that Defendant violated the Fair Debt
7 Collections Protections Act to the detriment of Plaintiff by using false, deceptive, and misleading
8 representations or means in connection with the collection of an alleged debt wherein Defendant
9 misrepresented the character, amount, and legal status of the alleged debt; (15 USC 1692(e)(2))
10 & (f), and by threatening to take action against Plaintiff that could not legally be taken. (15 USC
11 1692(e)(5)). By causing to be sent to Plaintiff, through the United States mail, fraud and/or
12 negligent demands for payment for which Defendant had no authority to make. Plaintiff alleges
13 and avers that Defendant caused to be sent through the United States Mail Service, fraud and/or
14 negligent demands for payment from Plaintiff in order to facilitate the herein alleged fraud
15 and/or negligence. Plaintiff alleges and avers that Defendant subjected Plaintiff to a fraud and/or
16 negligence scheme to collect monies not owed to Defendant and that Defendant intended to
17 collect the full amount on an alleged debt, which over the term of the alleged debt would amount
18 to (full amount of principal and interest over term of alleged note), 115490.92.

19 Plaintiff alleges and avers that the above alleged scheme has the result of making it
20 impossible for a purchaser of a private residence involved in said scheme to ever achieve the
21 primary purpose of the contract, that of achieving quiet title at completion of the contract.

22 Plaintiff alleges and avers that Defendant failed to exercise due diligence concerning
23 Defendant's standing to collect the alleged debt claimed by Defendant to be owed to Defendant
24 or Defendant's principal, by Plaintiff.

25 Plaintiff alleges and avers that Defendant subjected Plaintiff to severe emotional stress
26 through direct or implied threat that Plaintiff would lose Plaintiff's primary place of residence if
27 Plaintiff failed to pay the extortion demanded by Defendant.

28 **PLAINTIFF DEMANDS STRICT VERIFIED PROOF**

29 Plaintiff herein demands strict verified proof, according to the rules of evidence all of the
30 following:

- 31 A. that Plaintiff entered into a legal and binding contract with Defendant that would
32 establish the alleged debt;

1 B. that Defendant is the singular and true holder of said debt instrument; Plaintiff herein
2 demands strict verified proof, according to the rules of evidence, of the standing of every
3 signatory on each and every document filed into any court record concerning the
4 property, or sent to Plaintiff or any other entity concerning the alleged obligation
5 Defendant has attempted to collect from Plaintiff.

6 In the event that Defendant were to prove that a debt claim exists against the property,
7 and that Defendant is the holder or agent for the holder of said debt, Plaintiff demands strict
8 verified proof that Defendant's claim against the debt is the singular and exclusive claim based
9 on the purported contract, the basis of which Defendant is attempting to collect a debt.

10 Plaintiff herein demands strict verified proof, according to the rules of evidence that:

11 Plaintiff entered into a contract with Defendant, or Defendant's principal for whom
12 Defendant claims to act as agent, granting Defendant a legal claim against the property as
13 protection against loss in the event Plaintiff failed to meet the obligations of the above alleged
14 debt.

15 Defendant is the true and exclusive holder, or is the proper agent for said holder, of said
16 legal claim against the property.

17 The alleged document purporting to create a lien against the property was granted by
18 Plaintiff to Defendant or to Defendant's principal for whom Defendant claims to be acting as
19 agent.

20 In the event Defendant claims to have received assignment of the alleged debt instrument,
21 Plaintiff herein demands strict verified proof, according to the rules of evidence that Defendant,
22 or Defendant's principal, is the exclusive holder of said instrument.

23 In the event Defendant is able to produce a bona fide lien document, Plaintiff herein
24 demands strict verified proof that Plaintiff granted such claim to Defendant by name, Defendant
25 is, and at all times has been the holder of the alleged note purporting to evidence a debt.

26 Plaintiff herein demands strict verified proof, according to the rules of evidence that
27 Defendant, at no time, received consideration in return for a transfer of the above referenced
28 note, the basis of which the above referenced lien document was allegedly written as protection
29 against loss to the holder, to a third party for consideration tendered.

30 In the event Defendant claims to be the holder of a lien document that was not granted
31 directly to Defendant in Defendant's name, or in the name of the principal for which Defendant
32 claims to act as agent, Plaintiff herein demands strict verified proof, according to the rules of
33 evidence, of a complete chain of legal possession of said lien document.

1 In the event Defendant is able to produce a complete chain of legal possession of the
2 above referenced document purporting to create a lien against the property, Plaintiff herein
3 demands strict verified proof, according to the rules of evidence that, at all times, the ownership
4 of the alleged lien document and the alleged note were transferred together such that, at no time,
5 one entity held the alleged lien and another held the alleged note.

6 In the event that Defendant were to prove that a debt claim exists against the property,
7 Plaintiff demands strict verified proof that Defendant's claim against the debt is the singular and
8 exclusive claim based on the purported debt claim which Defendant is attempting to collect.

9 CAUSES OF ACTION

10 *FDCPA – 1ST CAUSE OF ACTION*

11 Comes now Plaintiff, and hereby complains and alleges that the Defendant did violate the
12 Fair Debt Collection Practices Act, 15 U.S.C. 1692e and 1692f by providing false and
13 misleading information by mailing a dunning letter dated Friday, May 18, 2012 by U.S.P.S. to
14 the Plaintiff which asked for a lump sum of money. Defendant failed to prove up the existence
15 of a debt to which Plaintiff was liable. Defendant failed to provide evidence to show that
16 Defendant was a bona fide holder of a debt instrument to which Plaintiff was liable. Defendant
17 failed to show agency for a bona fide holder of a debt instrument to which Plaintiff was liable.
18 Defendant further failed to show that said bona holder was also a bona fide holder of a document
19 establishing a lien against real property owned by Plaintiff. Defendant further failed to itemize
20 the various charges that comprised the total amount of the alleged debt. Defendant failed to
21 clearly and fairly communicate information about the amount of the alleged debt to Plaintiff.
22 This includes how the total amount due was determined if the demand for payment includes add-
23 on expenses like attorneys' fees or collection costs, this in violation of 15 U.S.C. 1692(e).
24 Defendant used false, deceptive and misleading representations in connection with collection of
25 any debt, 15 U.S. C § 1692e. By demanding payment of a debt Plaintiff did not owe and by
26 making direct, indirect, and valid threats of dire consequences to Plaintiff if Plaintiff failed to
27 pay the alleged debt, Defendant acted in clear violation of 15 U.S.C. 1692(f), Fields v. Wilber
28 Law Firm, USCA-02-C-0072, Circuit Court, Sept 2, 2004B.

29 *FDCPA – 2ND CAUSE OF ACTION*

30 Defendants "Bill" meets the definition of overshadowing. The overshadowing in the
31 document sent to the Plaintiff stated to "balance due" and "account paid in full which
32 overshadows the consumer warning on the document. 1996 U.S. Dist. LEXIS 22555, DEBRA

3 **NEGLIGENCE- 3RD CAUSE OF ACTION**

4 Defendant, on Friday, May 18, 2012 caused to be sent to Plaintiff, through the United
5 States Mail, a letter demanding that Plaintiff pay United States Money in the amount of
6 115,490.92. The letter was in the form of a monthly payment. Defendant acted to miss-lead
7 Plaintiff into believing that Plaintiff was under obligation to forfeit Plaintiff's personal property
8 to Defendant in the form of money of the United States. Defendant made the above referenced
9 demand on Plaintiff under the guise of being a debt collector, attempting to collect a debt.

10 Defendant made a false representation to Plaintiff demanding payment on a debt.
11 Defendant knew, or should have known that said demand was made without standing or capacity
12 on the part of Defendant. Defendant intended that Plaintiff accept the representation of
13 Defendant as true. Plaintiff believed Defendant and was harmed thereby.

14 Defendant, by falsely demanding payment from Plaintiff when Defendant lacked
15 standing and/or capacity to make such demand was an act of criminal fraud and/or negligence
16 which results in the civil tort alleged here under the cause of action of common law fraud and/or
17 negligence or fraud and/or negligence per se.

18 **STIPULATION SUBJECT TO DISCOVERY**

19 In the interest of judicial economy and of limiting the scope of this litigation, Plaintiff is
20 prepared to stipulate Defendant's standing and file an amended complaint, without requiring
21 Defendant to prepare an answer to the current complaint, if Defendant provides proof of said
22 standing as demanded above.

23 **JURY DEMAND**

24 Plaintiff requests a jury trial on all issues of fact and law raised by the allegations in this
25 Complaint.

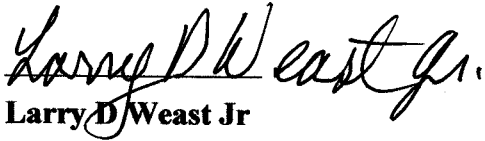
26 **PRAYER**

27 WHEREFORE, Plaintiff prays for judgment against the Defendant and Defendant's co-
28 conspirators as follows:

- 29 1. For quiet title to Property against claims by Defendant;
- 30 2. For disgorgement of all amounts wrongfully acquired by Defendant according to
- 31 proof at trial;
- 32 3. For \$2000.00 for each violation of the Fair Debt Collection Practices Act as
- 33 proved up at trial;

4. For three times the amount Defendant intended to defraud and/or negligence Plaintiff of. A sum equal to \$445,356.78 ;
5. For pain and suffering due to extreme mental anguish in an amount to be determined at trial;
6. For pre-judgment and post-judgment interest according to proof at trial;
7. For attorney's fees and costs as provided by statute; and,
8. For such other relief as the Court deems just and proper.

Respectfully,


Larry D Weast Jr

VERIFICATION

I, Larry D Weast Jr, do swear and affirm that all statements made herein are true and accurate, in all respects, to the best of my knowledge.

Larry D Weast Jr.
Larry D Weast, Jr
1816 Lariat Lane
Burleson, TX 76028

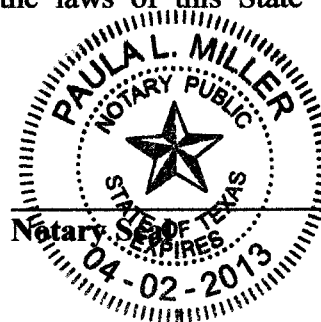
The Person above, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document and acknowledged to me that he/she executed the same in his authorized capacity and that by his signature on this instrument who is the person who executed this instrument.

I certify under PENALTY OF PERJURY under the laws of this State that the foregoing paragraph is true and correct.

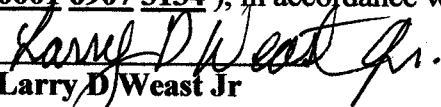
Witness my hand and official seal.

Paula L. Miller

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS



1 I hereby, Larry D Weast Jr certify that a true and correct copy of above and foregoing has been
2 delivered to Recontrust Company NA, 2380 Performance Dr TX2-984-0407, Richardson, TX
3 75082, on this the 2 day of August 2012, by certified mail (Certified Mail Receipt # 7012 1010
4 0001 6907 3134), in accordance with the rules governing same.

5 
6 Larry D Weast Jr
7 1816 Lariat Lane
8 Burleson, Texas 76028
9

ORIGINAL

CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Larry D. Weast, Jr.

DEFENDANTS

Recontrust Company, N.A.

(b) County of Residence of First Listed Plaintiff Johnson
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Dallas

(IN U.S. PLAINTIFF CASES ONLY)

NOTE:

IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

4-12CV-541 A

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	OTHER STATUTES <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
U.S. Civil Statute: 15 U.S.C. 1692e and 1692f

Brief description of cause:

Defendant claims to be bona fide holder of debt instrument.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

445,356.78

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) PENDING OR CLOSED:

(See Instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

8-2-12
FOR OFFICE USE ONLY

Larry D. Weast Jr.

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE